IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1044 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JALAMSING SURATSING SENGAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR PR ABICHANDANI for Appellant(s) : 1,
MR LR PUJARI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 14/09/2007

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and order of the learned

Special Judge, Ahmedabad dated 31st August, 1993 passed in Special Case No.3 of 1991 whereby the trial Court convicted the appellant, herein, for the offence punishable under Section 7 of the Prevention of Corruption Act and sentenced to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.500/- and in case of default to undergo further imprisonment for a period of three months. The appellant was also convicted for the offence punishable under Section 13(1)(d)(i) and (ii) and Section 13(2)of the Prevention of Corruption Act and sentenced to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.500/- and in case of default to undergo further imprisonment for a period of three months. The aforesaid sentences were ordered to run concurrently.

2.0 The brief facts giving rise to the present appeal are that one Bhanabhai Govabhai Chauhan-original complainant-P.W.-1, herein, at the relevant point of time, was residing at

Behrampura, Nr. Calico Mill's Chawl, Jamalpur area and he used to ply hired auto-rickshaw. P.W.-1 used to stand near gate of A.P.M.C., in Jamalpur area of Ahmedabad with his auto-rickshaw and pick passengers from there. It was the case of the prosecution before the trial Court that the original accused-the appellant, herein, used to collect Rs.2/- from P.W.-1 and other auto-rickshaw drivers for allowing them to carry passengers with stock of vegetables in their passenger auto-rickshaws. It was further case of the prosecution that whenever any auto-rickshaw driver denied to pay Rs.2/- to the appellant, the appellant used to abuse him by using filthy language and used to throw out stock of vegetables of passenger from the auto-rickshaw of such auto-rickshaw driver. The appellant had also extracted amount of Rs.2/- from P.W.-1 on several occasions. Hence, being aggrieved with the same, P.W.-1 decided to lodge a complaint with the Anti Corruption Bureau, Ahmedabad.

2.1 Accordingly, on 16.02.1990, P.W.-1 approached Anti Corruption Bureau, Ahmedabad and lodged a complaint under the Prevention of Corruption Act against the appellant. After the recording of the complaint of P.W.-1 on 16.02.1990, a trap was arranged for 17.02.1990.

2.2 On 17.02.1990, Mr. Virsinhbhai Kalubhai Ambaliyar- Investigating Officer-P.W.-3, herein, summoned panchas. On arrival of panchas, P.W.-1 and the panchas were introduced to one another. In pursuance of that P.W.-1 narrated the facts of the complaint in brief and the complaint given by P.W.-1 was read over to the panchas and then panchas signed it. P.W.-1, thereafter, produced one currency note of Rs.2/- and its number was noted down. The said currency note was, then, given to one Mr. Prithvisinh Bhavansinh, Police Constable for experiment of ultra violet light and anthracene powder.

2.3 Mr. Prithvisinh, showed the said currency

note to P.W.-1 and the panchas in normal light as well as in ultra violet light but nothing significant appeared. Mr. Prithvisinh, thereafter, smeared the currency note of Rs.2/- with anthracene powder and then lightly cleaned it with a cloth and exposed it to normal light as well as to the ultra violet light. When the said currency note was exposed to the normal light nothing significant appeared, but, when the same was exposed to ultra violet light, dots of white-blue colour appeared on the said currency note of Rs.2/-. Then, the similar experiment was carried out on the hands of Mr. Prithvisinh. When the hands of Mr. Prithvisinh were exposed to the normal light nothing significant appeared, but when the same were exposed to the ultraviolet light, dots of white-blue colour appeared on the hands and finger tips of Mr. Prithvisinh. Then, Mr. Prithvisinh, put the currency note of Rs.2/- treated with anthracene powder in the pocket of P.W.-1 and P.W.-1 was instructed not to touch the said currency note until the same was demanded by

the appellant. The said paper and cloth were, thereafter, burnt in the presence of the panchas and the bottle of anthracene was kept back in the cupboard. Thereupon, a preliminary 'Panchnama' was carried out to the aforesaid effect. Then, P.W.-1 and the panchas were given necessary instructions by P.W.-3. P.W.-2 i.e. original Panch No.1 was instructed by P.W.-3 to accompany P.W.-1 and to witness the transaction that may take place between P.W.-1 and the appellant. Thereafter, raiding party and P.W.-1 and panchas, left for the A.P.M.C., in Jamalpur area in their respective vehicles.

2.4 On reaching the A.P.M.C., as per the arrangement, everybody took their position. P.W.-1 and P.W.-2 stood near the gate of the A.P.M.C. with auto-rickshaw. At that time a lady came and told P.W.-1 that she wanted to go to Meghaninagar along with her stock of vegetables. Hence, P.W.-1 told P.W.-2 to seat beside him and drove the auto-rickshaw in the market along with

the said lady. In the market, P.W.-1 loaded the auto-rickshaw with the stock of vegetables purchased by the said lady. Then the lady took her seat with her vegetables, in the backseat of the auto-rickshaw, and P.W.-2 sat with P.W.-1 on driving seat and when they reached near the gate of the market, the appellant stopped them and asked P.W.-1 why he had loaded stock of vegetables in his auto-rickshaw. In reply to that P.W.-1 apologized and requested the appellant to let him go. The appellant, hence, demanded an amount of Rs.2/- from P.W.-1 for allowing him to carry stock of vegetables in passenger auto-rickshaw. On amount being demanded by the appellant, P.W.-1 took out currency note of Rs.2/- treated with anthracene powder from the pocket of his shirt. The appellant accepted the same and put it in right hand side pocket of his pant. Then, as per the arrangement, P.W.-1 gave signal to the raiding party and the raiding party immediately rushed to the spot.

2.5 In pursuance of that the Investigating Officer-P.W.-3, gave his introduction to the appellant. However, since there was a huge crowd gathered, the appellant was taken to nearby police station. Then, P.W.-2 narrated the transaction which had taken place between P.W.-1 and the appellant and the same was recorded in 'Panchnama'. In pursuance of that, on instructions of P.W.-3, Panch No. 2 took out five currency notes of Rs.2/-, one currency note of Rs.5/- and one currency note of Rs.1/-, from the right hand side pocket of the pant of the appellant. The currency notes of Rs.2/- recovered from the pocket of the pant of the appellant were, then, counted and its numbers were tallied with the number already noted down in the preliminary Panchnama and number of one of the currency notes of Rs.2/- found to be matching with the number mentioned in the preliminary Panchnama.

2.6 Thereupon, the hands of the raiding party

were exposed to the normal light as well as to the ultra violet light, but, nothing significant appeared. Then, the hands of P.W.-1, Panch No. 2 and the appellant were exposed to the normal light as well as to the ultra violet light. When the hands of P.W.-1, Panch No.2 and the appellant were exposed to the normal light nothing significant appeared, but, when their hands were exposed to the ultra violet light, dots of white-blue colour appeared on their hands. When the similar experiment was carried out on the currency notes, the shirt worn by P.W.-1 and pant worn by the appellant, presence of anthraces powder was noticed. When compared, the number of one of the currency notes of Rs.2/- tallied with number mentioned in the preliminary panchnama. Thereafter, the signatures of the panchas were obtained on the part of the pant of the appellant where presence of anthracene powder was found. Then, the 'Muddamal' recovered from the appellant, including the pant worn by the appellant, was attached and the same was recorded

in Panchnama.

2.7 In pursuance of that offence was registered against the appellant under the Prevention of Corruption Act. After the completion of investigation and after obtaining sanction, charge-sheet was submitted against the appellant before the trial Court. The trial Court framed, read over and explained charges under Section 7 and Section 13(1)(d)(i), (ii) and (iii) and Section 13(2)of the Prevention of Corruption Act to the appellant. However, the appellant did not plead guilty to the charges and claimed to be tried. Then the trial Court heard all the parties and convicted and sentenced the appellant as stated in Para-1 of the judgment. However, the trial Court acquitted the appellant in respect of charges for offence punishable under Section 13(1)(d)(iii). The aforesaid sentences were ordered to run concurrently. Hence, the present appeal.

3.0 Mr. Abhichandani, learned Advocate for the appellant has submitted that the trial Court ought to have held that the amount of Rs.16/- recovered from the pocket of the pant of the appellant, including the currency note of Rs.2/- smeared with anthracene powder, was the balance amount, out of Rs.20/- given by the appellant to the tea stall owner, towards the payment of price of tea.

3.1 Learned Advocate has further submitted that the trial Court has committed an error in holding that the appellant had tried to run away from the scene of offence, at the time when the raid was carried out, and that shows guilty conscience on the part of the appellant.

3.2 Learned Advocate has submitted that the lady, who was sitting in the auto-rickshaw of P.W.-1 with her stock of vegetables, at the time of raid, was not examined by the prosecution.

3.3 Learned Advocate has further submitted that the trial Court has failed to take into consideration the fact that P.W.-1 had filed the complaint with A.C.B., Ahmedabad against one 'Jwalasing' whereas the name of the appellant is 'Jalamsing'.

3.4 Learned Advocate has submitted that taking into consideration the fact that the amount of bribe was meagre i.e. Rs.2/- only, the trial Court ought to have given the benefit of statutory exemption under Section 20(3) of the Act to the appellant.

3.5 Learned Advocate has lastly submitted that if the Hon'ble Court is of the opinion that the appellant cannot be given the benefit of statutory exemption, then, taking into consideration the long time which has elapsed from the date of incident till recording of conviction of the appellant and the mental, physical and financial agony undergone by the

appellant during the aforesaid period, a lenient view should be taken in regard to the sentences of the appellant.

4.0 On the contrary, Mr. Pujari, learned APP has supported the case of the prosecution and has stated that after taking into consideration all the facts and circumstances of the case and the documents placed on record, the trial Court has passed the order of conviction, and hence, no interference is called for by this Court.

5.0 It was the case of the prosecution before the trial Court that the appellant, herein, on 17.02.1990 had demanded and accepted an amount of Rs.2/- from P.W.-1, for allowing P.W.-1 to carry passenger with stock of vegetables in his (P.W.-1's) passenger auto-rickshaw, which was an illegal gratification. The prosecution, in support of its case, has examined three witnesses and has placed reliance on the Complaint (Exhibit-14), Panchnama(Exhibit-12) and Seizure

Memo (Exhibit-11). In above view of the matter, here, it would be relevant to refer to deposition of P.W.-1.

5.1 P.W.-1 in his deposition has stated that, at the relevant point of time, he was residing at Behrampura, Nr. Calico Mill's Chawl, Jamalpur Area and he used to ply hired auto-rickshaw. He has further stated that he used to stand near gate of A.P.M.C., in Jamalpur area of Ahmedabad city and pick passengers from there. P.W.-1 has stated that the appellant, herein, daily used to stand near the gate of A.P.M.C. and used to collect Rs.2/- from him (P.W.-1) and other auto-rickshaw drivers, plying their auto-rickshaw around A.P.M.C., for allowing them(auto-rickshaw drivers) to carry passengers with the stock of vegetables in their passenger auto-rickshaws and whenever any auto-rickshaw driver denied to pay Rs.2/- to the appellant, the appellant used to abuse such auto-rickshaw driver by using filthy language and used to throw out stock of

vegetables of passenger from the auto-rickshaw. P.W.-1 has stated that, since the appellant had also extracted amount of Rs.2/- from him (P.W.-1) on several occasions, being aggrieved with the same, he decided to lodge a complaint with the Anti Corruption Bureau, Ahmedabad.

5.2 P.W.-1 has stated that he, therefore, on 16.02.1990, approached Anti Corruption Bureau, Ahmedabad and lodged a complaint under the Prevention of Corruption Act against the appellant. After the recording of complaint of P.W.-1 on 16.02.1990, a trap was arranged for 17.02.1990. On 17.02.1990, P.W.-3-Investigating Officer-, herein, summoned panchas. On arrival of panchas, P.W.-1 and the panchas were introduced to one another. P.W.-1, thereupon, narrated the facts of the complaint in brief and the complaint given by P.W.-1 was read over to the panchas and then the panchas signed it. P.W.-1, thereafter, produced one currency note of Rs.2/-, the number of which was noted down in the preliminary

Panchnama. The said currency note was, then, given to one Police Constable for experiment of ultra violet light and anthracene powder.

5.3 The said police constable, thereafter, showed the said currency note to P.W.-1 and panchas in normal light as well as in ultra violet light but nothing significant appeared. Then, police constable smeared the said currency note of Rs.2/- with anthracene powder and then lightly cleaned it with a cloth and exposed it to normal light as well as to the ultra violet light. When the said currency note was exposed to the normal light nothing significant appeared, but, when the same was exposed to the ultra violet light, dots of white-blue colour appeared thereon. Then, similar result was found when the same experiment was carried out on the hands of the aforesaid Police Constable. Thereupon, the said Police Constable, put the currency note of Rs.2/- in the pocket of P.W.-1. P.W.-1 was instructed not to touch the said currency note

until the same was demanded by the appellant. The aforesaid paper and cloth were, thereafter, burnt in the presence of the panchas and the bottle of anthracene was kept back in the cupboard. Thereupon, the aforesaid events were noted down in preliminary 'Panchnama'. Then, the panchas and the members of the raiding party were given necessary instructions by P.W.-3. P.W.-2 was instructed by P.W.-3 to accompany P.W.-1 and to witness the transaction that may take place between P.W.-1 and the appellant. P.W.-1, thereafter, along with P.W.-2 left for the A.P.M.C. in Jamalpura area in his(P.W.-1's) auto-rickshaw, followed by the raiding party in their vehicles.

5.4 P.W.-1 has further stated that on reaching the A.P.M.C., as per the arrangement, he along with P.W.-2 stood near the gate of the market with auto-rickshaw. At that time a lady came and told him(P.W.-1) that she wanted to go to Meghaninagar along with her stock of

vegetables. Hence, P.W.-1 told P.W.-2 to seat beside him and drove the auto-rickshaw in the market along with the lady. There, P.W.-1 loaded the auto-rickshaw with the stock of vegetables purchased by the said lady. P.W.-1 has further stated that, then, the said lady took her seat in the backseat of the auto-rickshaw with her stock of vegetables, and P.W.-2 sat with him (P.W.-1) on driving seat and when they reached near the gate of the market, the appellant stopped them and asked him (P.W.-1) that why he had loaded stock of vegetables in his auto-rickshaw. P.W.-1, hence, apologized and requested the appellant to let him go. The appellant, therefore, demanded an amount of Rs.2/- from P.W.-1 for allowing him(P.W.-1) to carry vegetables in passenger auto-rickshaw. P.W.-1, on amount being demanded by the appellant, took out currency note of Rs.2/- treated with anthracene powder from the pocket of his shirt and offered to the appellant. The appellant accepted the same and put it in right hand side pocket of his pant. Then, as per

the arrangement, P.W.-1 gave signal to the raiding party and the raiding party immediately rushed to the spot.

5.5 In pursuance of that the Investigating Officer-P.W.-3, gave his introduction to the appellant. However, since there was a huge crowd gathered, the appellant was taken to nearby police station. On reaching there, P.W.-2 narrated the transaction which had taken place between P.W.-1 and the appellant and the same was recorded in 'Panchnama'. In pursuance of that, on instructions of P.W.-3, Panch No. 2 took out five currency notes of Rs.2/-, one currency note of Rs.5/- and one currency note of Rs.1/-, from the right hand side pocket of the pant of the appellant. The numbers of the currency notes of Rs.2/- recovered from the pocket of the pant of the appellant were, then, tallied with the number already noted down in the preliminary Panchnama and number of one of the currency notes of Rs.2/- was found to be matching with the number

mentioned in the preliminary Panchnama.

5.6 P.W.-1 has stated that, thereupon, the hands of the raiding party were exposed to the normal light as well as to the ultra violet light, but, nothing significant appeared. Then, the hands of P.W.-1, Panch No. 2 and the appellant were exposed to the normal light as well as to the ultra violet light. When the hands of P.W.-1, Panch No.2 and the appellant were exposed to the normal light nothing significant appeared, but, when their hands were exposed to the ultra violet light, dots of white-blue colour appeared on their hands. Similar result was found when the said experiment was carried out on the aforesaid currency note of Rs.2/- as well as on shirt worn by P.W.-1 and on pant worn by the appellant. Thereafter, the signatures of the panchas were obtained on the part of the pant of the appellant where presence of anthracene powder was found. Then, the 'Muddamal' recovered from the appellant, including the pant worn by the

appellant, was attached and a Panchnama was drawn to the aforesaid effect.

5.7 At the time of his cross-examination, P.W.-1 stuck to the version given by him in his deposition and the defence failed to bring out anything which could help the appellant.

5.8 The version of offence given by P.W.-1 that the appellant demanded and accepted Rs.2/- from him (P.W.-1) for allowing him to carry passenger with the stock of vegetables in his passenger auto-rickshaw, is also supported by evidence of one Naranbhai Jagjivandas Chauhan– Original Panch No.1-P.W.-2, herein, as well as one Virsinh Kalusinh Ambaliyar, Investigating Officer, P.W.-3. P.W.-2 and P.W.-3 have strongly supported the case of prosecution of demand and acceptance of bribe by the appellant from P.W.-1 and their evidence remains uncontroverted. In a case where the evidence are overwhelming and convincing and the panch witnesses inspire

confidence and on appreciation of the evidence, it clearly transpire that the panch was an independent and reliable person, there is no reason to discard the evidence of panch on the ground that it requires independent corroboration.

5.9 In the case on hand, the case of the prosecution is strongly supported by the complaint(Exhibit-14), Panchnama (Exhibit-12) and Seizure Memo (Exhibit-11) and by evidence of P.W.-1 as well as P.W.-2 and P.W.-3 who are independent witnesses. From the depositions of P.W.-2 and P.W.-3 it clearly transpires that the appellant demanded Rs.2/- from P.W.-1 for allowing him (P.W.-1) to carry a lady passenger with her stock of vegetables in his(P.W.-1's) passenger auto-rickshaw, P.W.-1 offered the currency note of Rs.2/-, treated with anthracene powder and the same was accepted by the appellant in the presence of P.W.-2 and at that time the appellant was caught red handed and the said

currency note was recovered from the right hand side pocket of the pant of the appellant, in the presence of P.W.-3 and the raiding party. Hence, from the evidence of both P.W.-2 and P.W.-3 as well as from the Complaint (Exhibit-14), Seizure Memo (Exhibit-11) and the Panchnama (Exhibit-12), the ingredients of bribe i.e. the demand, offer and acceptance are proved beyond doubt by the prosecution. The evidence of P.W.-2 and 3 are natural and trustworthy, and hence, there is no reason to discard the same.

5.10 Since the evidence discussed hereinabove are found to be sufficient in deciding the Appeal, I am not discussing the depositions of other witnesses, as they are not of much relevance.

5.11 As regards the contention raised by the learned Advocate for the appellant that the amount of Rs.16/- recovered from the pocket of the appellant was the balance amount, out of

Rs.20/- given by the appellant to the tea stall owner towards price of tea, is concerned, it would be relevant to refer to a decision of the Hon'ble Apex Court in the case of ***"Biranchi Narayan Mohanty Vs. State of Orissa"*** reported in (2001)9 SCC 288. In that case, the accused-appellant was caught red-handed in a trap while accepting an amount of Rs.48/- from P.W.-11. The appellant-accused put forward a defence that the said amount of Rs.48/- received by him from P.W.-11 was entrusted by D.W.-1 to P.W.-11 with instruction to hand it over to him i.e. to the appellant-accused, for purchase of mustard oil. However, taking into consideration facts and circumstances of the case and the clear and convincing evidences produced by the prosecution, the Apex Court did not accept the defence put forward by the appellant-accused and convicted him.

5.12 In the case on hand, from the documents produced on record and from the evidence of P.W.-

1, P.W.-2 and P.W.-3 it clearly transpires that on 17.02.1990 when P.W.-1 and P.W.-2 reached near the gate of the A.P.M.C., in auto-rickshaw of P.W.-1 loaded with the stock of vegetables of the lady passenger, the appellant stopped them and demanded Rs.2/- from P.W.-1 for allowing him(P.W.-1) to carry the stock of vegetables with passenger in his (P.W.-1's) passenger auto-rickshaw, and hence, P.W.-1 took out the currency note of Rs.2/- treated with anthracene powder, gave it to the appellant and the appellant was caught red-handed while accepting the same. Therefore, in view of the decision of the Hon'ble Apex Court in the case of ***"Biranchi Narayan Mohanty"***(Supra), the above said contention raised by the learned Advocate for the appellant, cannot be accepted. Even otherwise in view of the fact that the said contention was raised at very belated stage i.e. at the time of trial only and prior to that, at no point of time i.e. while giving his statement to the P.W.-3 the Investigating Officer, the appellant took defence

that the amount of Rs.16/- recovered from the pocket of his pant was the balance amount, out of Rs.20/- given by him (the appellant) to the tea stall owner towards price of tea. The said fact clearly suggests that the defence put forward by the appellant is nothing but an afterthought, and hence, the said contention is rejected.

5.13 As regards the contentions raised by the learned Advocate for the appellant that the trial Court ought not to have held that the appellant had tried to runaway from the place of offence and that the trial Court failed to take into consideration the fact that the lady who was sitting in the auto-rickshaw of P.W.-1, at the time of raid was not examined by the prosecution, are concerned, even if it is believed to be true that the appellant did not try to run away from the place of offence and take into consideration the fact that the prosecution has not examined the aforesaid lady as a witness, then also the fact remains that the appellant demanded and

accepted bribe of Rs.2/- from P.W.-1 for allowing him(P.W.-1) to carry the aforesaid lady passenger with her stock of vegetables and the appellant was caught red-handed while accepting the same and subsequently the said note was recovered from the possession of the appellant. The case of the prosecution is strongly supported by the evidence of P.W.-1 as well as by the evidence of P.W.-2 and P.W.-3 and who are independent witnesses and the Complaint (Exhibit-14), Seizure Memo (Exhibit-11) and the Panchnama (Exhibit-12). Hence, the said contentions are rejected.

5.14 As regards the contention raised by the learned Advocate for the appellant that the trial Court ought to have taken into consideration the fact that P.W.-1 had filed the complaint with A.C.B., Ahmedabad against one 'Jwalasing' wheres the name of the present appellant is 'Jalamsing', is concerned, it would be relevant to refer to a decision of the Jharkhand High Court in the case of ***“Gokuleshwar Banerjee Vs. State of Jharkhand”***

reported in 2005 Cri. L.J. 1535 wherein it was held that if minor discrepancies in evidence of prosecution witnesses do not cast any cloud of suspicion to the credibility of prosecution case, then it will not be fatal to the case of the prosecution.

5.15 In the case on hand, from the record it transpires that P.W.-1 had named the appellant as 'Jwalasing' instead of 'Jalamsing' in the complaint filed by him(P.W.-1) with A.C.B., Ahmedabad. It appears that since the appellant was not wearing any badge, P.W.-1 could not know his real name. Be that as it may, P.W.-1, at the time of trial, identified the appellant as the person who daily used to stand near the gate of A.P.M.C., in Jamalpura area and used to collect Rs.2/- from the auto-rickshaw drivers for allowing them to carry stock of vegetables in passenger auto-rickshaws and as a person, who, on 17.02.1990, had demanded and accepted an amount of Rs.2/- from him (P.W.-1). The evidence of

P.W.-1 are also supported by the evidence of P.W.-2 and P.W.-3 who also identified the appellant as the person who was caught red handed while accepting an amount of Rs.2/- from P.W.-1 on 17.02.1990 and from whose possession the said currency note of Rs.2/- treated with anthracene powder was recovered, in the presence of the panchas and the members of the raiding party. Hence, in view of the decision of the High Court of Jharkhand in the case of ***"Gokuleshwar Banerjee"*** (Supra) and in view of the above said factual position, the said contention shall not come to the rescue of the appellant and the same is rejected.

5.16 As regards the contention raised by the learned Advocate for the appellant that since the amount in question is very meagre i.e. Rs.2/- only, the trial Court ought to have given benefit under Section 20(3) of the P.C. Act to the appellant, is concerned, P.W.-1, in his complaint(Exhibit-14), has clearly stated that

the appellant daily used to stand near the gate of A.P.M.C, in Jamalpura area and used to collect Rs.2/- not only from him (P.W.-1) but from other auto-rickshaw drivers also, for allowing them to carry passengers with stock of vegetables in their passenger auto-rickshaws and whenever any auto-rickshaw driver denied to pay Rs.2/- to the appellant, the appellant used to abuse such auto-rickshaw driver, by using filthy language and used to throw out stock of vegetables of passenger from the auto-rickshaw of that auto-rickshaw driver. The said fact clearly suggests that the demand and acceptance of bribe from P.W-1 on 17.02.1990, by the appellant was not a solitary incident, but, even long before the filing of the complaint by P.W.-1, the appellant used to extract amount of Rs.2/- from the auto-rickshaw drivers plying their auto-rickshaw around A.P.M.C., in Jamalpura area, under threat and duress. In the case on hand, though, the amount of Rs.2/- accepted by the appellant from P.W.-1 on 17.02.1990 is not a big amount, the

same was not legal remuneration of the appellant. Hence, from the record, when it is clearly established that the appellant had, constantly, been engaged in the activity of extorting money from poor auto-rickshaw drivers and that he was caught red-handed while accepting bribe from the appellant on 17.02.1990, by misusing his position as a public servant, the question as to whether the amount was small or big is immaterial. Therefore, the said contention raised by the learned advocate for the appellant is rejected.

5.17 As regards the contention raised by the learned Advocate for the appellant to take lenient view in regard to the sentences of the appellant, is concerned, here, it would be relevant to refer to a decision of the Division Bench of this Court in the case of ***"(The) State of Gujarat Vs. Tejbhai Karimbhai Vora"*** reported in 1999(1)GLH 1024. In that case, the Division Bench of this Court taking into consideration the long period, which had elapsed, from the date of

incident till the recording of the conviction of the appellant, the age of the appellant and the fact that the appellant had lost vision of one of his eyes and was suffering from diabetes and blood pressure, took a lenient view and imposed the sentence of till rising of the Court.

5.18 Similar, view has been taken by the Hon'ble Apex Court in the case of ***"Biranchy Narayan Mohanty"***(Supra) as well as in the case of ***"State of Maharashtra Vs. Rashid B. Mulani"*** reported in (2006)1 SCC 407.

5.19 In the case on hand, the incident in question took place in the year 1990 and since then almost seventeen years have passed. Hence, taking into consideration overall facts and circumstances of the case and the mental, physical and financial agony undergone by the appellant and his family members for the aforesaid period as well as taking into consideration the view taken by the Division

Bench of this Court in the case of ***"(The) State of Gujarat"*** (Supra) and the view taken by the Hon'ble Apex Court in the case of ***"Biranchy Narayan Mohanty"***(Supra) as well as in the case of ***"State of Maharashtra"***(Supra), I am of the opinion that the ends of the justice would be met by reducing the sentences imposed by the trial Court on the appellant from two years to one year.

No further contention has been raised by the learned Advocate for the appellant.

6.0 In view of the above discussion and taking into consideration the facts and circumstances of the case and the evidence available on record, I have no hesitation in holding that the amount of Rs.2/- received by the appellant from P.W.-1 on 17.02.1990 was illegal gratification and that the ingredients of bribe i.e. demand, offer and acceptance has been successfully proved by the prosecution beyond doubt. However, taking into consideration the

long period i.e about 17 years which has elapsed from the date of offence as well as mental, physical and financial agony undergone by the appellant, I am of the opinion that the sentences imposed by the trial Court on the appellant are require to be reduced from two years to one year.

7.0 In the result, the Appeal is partly allowed. In the facts and circumstances of the case, while upholding the conviction, this Court reduces the sentences of **TWO YEARS** awarded by the learned Special Judge, Ahmedabad vide order dated 31st August, 1993 passed in Special Case No.3 of 1991, to **ONE YEAR** on each count. Rest of the judgment and order of the trial Court, stands confirmed. The bail bonds of the appellant stand canceled. The appellant shall surrender before the Jail / competent Authority within a period of **SIX WEEKS** from today.

(M.D. Shah,J.)

Umesh/